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OFFICE OF PETITIONS

In re	:	
Kumada et al.	:	DECISION ON
Reissue Application No. 10/626,553	:	PETITION
Filing Date: July 25, 2003	:	
Reissue of Application No. 10/210,813	:	
Attorney Docket No. 112536.98	:	

This is a decision on the PETITION REQUESTING WITHDRAWAL OF NOTICE OF INCOMPLETE REISSUE APPLICATION which was filed August 17, 2004, and which requested that the application papers which were deposited on July 25, 2003, be accepted and accorded a filing date of July 25, 2003.

The petition is before the Office of Patent Legal Administration for decision.

The petition is taken as (a) a petition under 37 CFR 1.183 for waiver of the requirement of 37 CFR 1.173(a)(1) and (2) as to a complete specification and drawings at filing, and (b) a petition under 37 CFR 1.182 requesting that the application be accorded a filing date of July 25, 2003. That petition is granted.

REVIEW OF FACTS

1. On July 25, 2003, the application was deposited as a continuation of reissue Application No. 10/210,813.

2. On August 10, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice of Incomplete Reissue Application notifying applicant that the application papers had not been accorded a filing date because they were deposited without a specification including at least one claim as prescribed by 35 U.S.C. 112 and without drawings, as prescribed by 35 U.S.C. 113. In addition, the application was stated to be missing an executed oath or declaration and a written consent of assignee with statement under 37 CFR 3.73(b).
3. On August 17, 2004, the present petition (and fee) were filed. Therein, applicants assert that the reissue application was filed on July 25, 2003 with 11 pages (including abstract, 5 sheets of drawings, the specification and claims 1-30). In support thereof, applicants submit a copy of their PTO RECEIPT FOR FILING OF PAPERS, as well as, a copy of the application papers as petitioner maintains they were filed on July 25, 2003.

**DECISION ON PETITION TO ACCORD FILING DATE
AND ACCEPT PAPERS AS COMPLETE APPLICATION**

A filing date of July 25, 2003, is requested based on the deposit of application papers made on that date. Petitioners' evidence has been considered but not found persuasive that the papers deposited on July 25, 2003 included a specification and drawings.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. However, the postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or a portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the

postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items. See MPEP 503.

Petitioner's receipt lists a "Reissue Application" among the contents of the filing. The receipt does not adequately itemize the contents. Thus, the receipt is not persuasive evidence of the presence of the components identified as missing.

Nonetheless, as this is an application for reissue, the content of the specification, claims and drawings and its timeliness for filing are not in question and were not in question on the date of deposit. This is so, even though the deposited application papers have not been shown to have contained the specification including the claims, and the drawings.

In view of the above, this application is accepted as a complete application and accorded a filing date of July 25, 2003.

The Notice will not, however, be rescinded, and the petition fee will not be refunded, since the petition is being granted under 37 CFR §§ 1.182 and 1.183.

CONCLUSION

1. The petition is granted under 37 CFR §§ 1.182 and 1.183.
2. The application is being returned to the Office of Initial Patent Examination for further processing as a reissue application with a filing date of July 25, 2003, using the application papers deposited on petition filed August 17, 2004.
3. Receipt of the response to the Notice to File Missing Parts of Reissue Application filed April 15, 2004 is acknowledged.
4. Telephone inquiries related to this decision should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

5. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-3282.

Kenneth M. Schor

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration